

In the Supreme Court of the United States.

OCTOBER TERM, 1915.

THE UNITED STATES, PLAINTIFF IN ERROR	} No. 899.
v.	
HERMAN H. OPPENHEIMER ET AL.	

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK.

MOTION BY THE UNITED STATES TO ADVANCE.

Comes now the Solicitor General, and in accordance with the provisions of the Criminal Appeals Act, 34 Stat. 1246, respectfully moves the court to advance the above-entitled cause for hearing on a day convenient to the court during the next term.

On February 24, 1914, defendant in error Oppenheimer and certain other persons were jointly indicted in the District Court of the United States for the Southern District of New York for a conspiracy to commit an offense against the United States, to wit, to conceal assets from a trustee in bankruptcy prohibited by section 29-b of the Bankruptcy Act, in violation of section 37 of the Criminal Code. A demurrer and motion to quash was filed by said Oppenheimer on the ground *inter alia*, that the

prosecution was barred by the Statute of Limitations contained in section 29-d of the Bankruptcy Act, and the district court entered judgment quashing the indictment as to defendant in error Oppenheimer and certain others on that ground. Thereafter this court in the case of *United States v. Rabinowich*, 238 U. S. 78, held that the limitation contained in the Bankruptcy Act did not apply to a conspiracy to commit an offense against that act.

On December 21, 1914, defendant in error Oppenheimer and others were again indicted in the same district court for the same crime. A demurrer and motion to quash the latter indictment upon the grounds *inter alia* (a) that the prosecution was barred by reason of the action of the court on the former indictments, and (b) that the prosecution was barred by reason of the Statute of Limitations contained in section 29-d of the Bankruptcy Act. The district court entered judgment quashing the subsequent indictment on the ground that the judgment on the first indictments was determinative of the case and protected defendants in error from further prosecution for the same crime.

Notice of this motion has been served on opposing counsel.

JOHN W. DAVIS,
Solicitor General.

APRIL, 1916.

